IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.1142 OF 2005

Mr. Harshad H. Shah. ...Petitioner.
Vs.
Maganbhai Nanjibhai Savani & Ors. ...Respondents.
....
Mr.Madhav Jamdar for the Petitioner.
None for the Respondents.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 17, 2005.

P.C.:

The suit for eviction has been decreed on the ground that the tenant has acquired suitable alternative residential accommodation. The fact that there is an acquisition of alternative residential accommodation is an admitted position. The suit premises consist of one room admeasuring 150 sq.ft. The tenant has acquired alternative residential accommodation which admeasures 400 sq.ft., and is in a prime residential neighbourhood at Walkeshwar.

2. The submission is that the alternative premises are not suitable. The attention of the Court is drawn to the following evidence of the tenant in the course of his Examination-in-Chief:

> "I have my business premises at a very short distance from the suit premises. I every day go to suit premises for taking my lunch, evening tea etc. and taking rest at any time during day time. I and my wife stay in the suit premises overnight. My household articles for the same are very much lying in the suit premises. I have personally caused photograph of the same which I am producing herewith. I have got so many documents and various correspondence received by me at the suit premises."

3. This evidence, in my view, does not indicate that the alternate premises acquired by the tenant are not suitable. It may well be that the suit premises being situated in proximity to the business premises of the tenant, are used by the tenant for certain purposes. However, considering the distance between the

alternative premises which are situated at Walkeshwar and the suit premises at Sandhurst Bridge, it cannot be said that the premises at Walkeshwar are situated at an inconvenient location. The burden was on the tenant to establish that the alternative premises are not suitable once it was established that there is an acquisition of alternative premises. An effort was made before the Courts below to demonstrate that the alternative premises have been acquired in the name of the tenant's wife. The finding of fact is that it has not been established that the tenant's wife has any independent means to acquire the alternate premises or that they have been acquired out of her own funds. Admittedly, the tenant's wife is a housewife and there is no evidence to show that she had any resources of her own to acquire the alternative premises.

4. Counsel appearing on behalf of the Petitioner urged that in the First Appeal, the Appellate Bench of the Small Causes Court ought to have considered all the evidence on the record. In my view, there is absolutely no failure of justice. The acquisition of the alternative residential premises stands admitted. The only

evidence which has been relied upon to show that the alternative premises are not suitable, does not, in my view, give any rise to any such interference. In these facts and circumstances, no case for interference in the exercise of the supervisory jurisdiction under Article 227 is made out.

5. The petition is dismissed. The Petitioner shall have time until 31st December 2005 to vacate the premises subject to the filing of the usual undertaking within a period of four weeks from today.

.....